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# NEWSLETTER



Information and Privacy Commissioner / Ontario

Vol. 3 Issue 2

Spring 1990

## Commissioner's Message

1990 promises to be an eventful year! In addition to handling appeals and investigating compliance concerns, the Commissioner's office will also be preparing for implementation of freedom of information and privacy legislation at the local government level. In a scant nine months, January 1991 to be precise, the *Municipal Freedom of Information and Privacy Act* will be in effect.

To accommodate the anticipated needs of an additional 3,000 local government institutions, our agency has been reorganized. This issue's insert details the internal reorganization. Our plans also include continued communication with municipalities and local government. This and subsequent newsletters, as well as our office's ongoing awareness and training sessions tailored to local government, will clarify the role of the Commissioner's office in the access and privacy schemes and, we hope, ease implementation of the new *Act*.

### History of Bill 49

The history of the municipal application of freedom of information and privacy legislation predates Bill 49, the *Municipal Freedom of Information and Protection of Privacy Act, 1989*. Local governments, for example, were first studied by the Williams Commission, who studied freedom of information and privacy legislation from 1978 to 1980. In its final report, the Commission recommended a local government application of such legislation.

In the final review stages of Bill 34, enacted on June 29, 1987 as the *Freedom of Information and Protection of Privacy Act, 1987*, the Standing Committee on the Legislative Assembly included a provision to extend the provincial *Act* to Ontario municipalities on January 1, 1991. (For a complete history of freedom of information and privacy in Ontario, please refer to the Newsletter, Volume 2, Issue 1, Winter 1989 issue).

On July 20, 1989, the Hon. Murray Elston introduced Bill 49, the *Municipal Freedom of Information and Protection of Privacy Act, 1989* for first reading in the Ontario Legislature. Second reading followed shortly thereafter on October 10, 1989; Third reading and Royal Assent followed on December 14, 1989.

### Highlights and advantages of Bill 49

Bill 49 is similar to the *Freedom of Information and Protection of Privacy Act, 1987* in intent, purpose and procedure; however, it has been modified to take into account the particular circumstances of municipal corporations and local boards. Two important distinctions are made in Bill 49; "head" is defined in a purely municipal context and draft by-laws, as opposed to cabinet records, are deemed an exemption.

There are several advantages to extending freedom of information and privacy legislation to local government. For example, Bill 49 codifies existing practices and introduces some new ones, especially in the

area of privacy restrictions. It ensures consistency, in accordance with specific provisions, when local bodies respond to requests for information. It also provides members of the public with a formal method of obtaining information, should the information be unavailable from customary sources. These advantages will help to realize the objective of the legislation: to promote more open government.

The introduction of freedom of information and privacy legislation is an opportunity for local government agencies to evaluate their current record management practices. All local government agencies would find it worthwhile to explore the types of information they collect and to review the reasons for collection, as well as their retention schedules and disposal procedures.

Good records management practices will not only make it easier to serve the public; they will also make it easier to comply with time frames set out in the legislation.

### Assistance for Municipalities

To help you prepare for the *Act*, both the Freedom of Information and Privacy Branch of Management Board of Cabinet and my office are available. Our roles are quite different. The Freedom of Information and Privacy Branch provides training and materials to prepare for implementation of the legislation, whereas the Information and Privacy Commissioner will resolve appeals made under, and will ensure compliance with, the *Act*. Given

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# Second Annual Privacy Summit

Information and Privacy Commissioner Sidney Linden, hosted the Second Annual Privacy Summit in Toronto on February 6, 1990. In attendance from the federal Privacy Commissioner's office in Ottawa were Privacy Commissioner John Grace, Executive Director Alan Leadbeater, and Director of Complaints Julien Delisle. Delegates from Quebec's Access to Information Commission included President Jacques O'Bready, Commissioner Carole Wallace, Director of Compliance and Investigations Clarence White, and Director of Legal Services André Ouimet. Others attending from the IPC were Assistant Commissioner Ann Cavoukian, Manager, Policy Development and Strategic Planning John Eichmanis, Executive Assistant Valerie Sharp, and Manager, Statistics and Research, David Duncan.

As at the First Privacy Summit, delegates discussed a number of timely privacy issues. The first item on the agenda was HIV/AIDS. IPC staff reported on Ontario's HIV/AIDS Workplace Policy, as well as the study of the flow of HIV/AIDS-related personal information through the provincial government. Staff discussed a second HIV/AIDS policy to address the broader privacy issues relating to the collection, use and disclosure of HIV/AIDS-related information.

Representatives from the Federal Privacy Commissioner discussed a study that the office commissioned regarding drug testing. Both federal government offices and the private sector were studied.

With regard to the 1990 Data Protection Commissioners Conference, the three offices agreed to make a joint submission on the issue of testing, probably focussing on AIDS and drug testing.

Law enforcement-related matters were also the subject of discussion. Ontario's Information and Privacy Commissioner inquired into Quebec and the federal government's experience with publishing the names and photographs of victims and accused in newspapers. The emerging use of DNA fingerprinting/testing to identify potential criminals in the United States, and its development in Canada were also explored. Specifically, the group discussed other potential uses of such test results once the identification process has been completed.

Quebec's Access to Information Commission explained its procedure for responding to proposals for personal information for research purposes. The Quebec Commission's procedure is unique: Ontario requests are reviewed by the Management Board of Cabinet and fed-

eral government requests are responded to by the head of the institution.

The use of the Social Insurance Number (SIN) as a personal identifier at the provincial level was discussed with a view to reducing its use by provincial agencies. The Federal Privacy Commissioner reported that further to his concerns regarding use of the SIN and, following far reaching recommendations made by a Parliamentary Committee, Treasury Board has responded by restricting federal government use of the SIN to 22 programs. Additionally, no new programs at the federal level may use the SIN without Parliamentary approval.

Dr. Ivan Fellegi, Chief Statistician of Statistics Canada, also attended the summit in order to raise the question of proposed matching of federal census data with provincial health-related data. Both the Deputy Ministers of Health for Ontario and Manitoba were present and participated in the subsequent discussions.

The Second Annual Privacy Summit proved to be a stimulating and interesting day for participants. Plans are underway for the Third Annual Privacy Summit, to be hosted in 1991 by Jacques O'Bready, President of Quebec's Access to Information Commission.

## Upcoming Seminars and Conferences

**April 23 and 24, 1990**

**ACCESS '90:** Focussing on Daily Access/Privacy Issues, to be held in Ottawa. This two-day conference is being presented by The Canadian Access and Privacy Association and organized by Riley Information Services Inc. For details, contact: Tom Riley, Riley Information Services, P.O. Box 261, Station F, Toronto, Ontario M4Y 2L5. Phone: (416) 593-7352.

**May 18, 1990**

A one-day seminar, to be held in Toronto, for local government agencies, covering freedom of information and protection of privacy legislation. For details, contact: EDU-LAW Consulting Services Limited, 1 Gloucester Street, Suite 109B, Toronto, Ontario M4Y 1L8. Phone: (416) 323-0358.

*If you wish to advise readers of an upcoming seminar or conference covering freedom of information and privacy issues, please contact our office.*





# New Structure of the Information and Privacy Commissioner/Ontario

The *Municipal Freedom of Information and Protection of Privacy Act* is expected to have an enormous impact on the operation of Ontario's Office of the Information and Privacy Commissioner.

In preparation for this change, a recent review was made of the office's organization and its resources, as well as the current needs of provincial bodies and the anticipated needs of local government. Generally, the discussions confirmed the need for a broadly-based organization within which departments specialize in particular areas such as appeals, compliance, and research. Specifically, the review resulted in the following organizational structure:

## Assistant Commissioners

As outlined in the *Freedom of Information and Protection of Privacy Act, 1987*, the Commissioner has the authority to appoint two Assistant Commissioners to assist him with the daily operation of the agency. Two Assistant Commissioner positions have been created, one with a focus on access and the other on privacy.

**Tom Wright**, formerly Director of Legal Services, will be the agency's spokesman on long-range strategic legal and access policy issues, as Assistant Commissioner.

**Dr. Ann Cavoukian**, as Assistant Commissioner, will provide a leadership role in the development of privacy-related policies.

## Executive Director

A new position of Executive Director has been created, with responsibility for the overall operation of the agency.

**Tom Mitchinson**, formerly the Director of Corporate Services, will now oversee the operation of seven departments within the agency: Administration, Appeals, Communications, Compliance, Legal Services, Research and Statistics, and Strategic Planning and Policy Development.

## Manager of Administration

**Marcia Boyd** will continue to be responsible for the agency's daily administration requirements including preparation, monitoring and administration of the budget; establishment of administrative policies and procedures; support services such as purchasing, office leasing; human resource functions, including recruitment, staff training and development, and benefits administration; and ongoing liaison with offices of the Legislative Assembly.

## Director of Appeals

**Judith Keene**, is responsible for the day-to-day operations of the appeals unit. The unit receives, investigates and attempts to settle all appeals of a decision of a head under the *Act*. If the appeal cannot be settled, staff assist the parties to an appeal in making representations to the Commissioner before he renders a final decision.

## Manager of Communications

**Sarah Jones**, as Manager of Communications, is responsible for implementation of the agency's communications plan and all outreach and public education initiatives. Other duties include media liaison, developing and producing all communications materials, conducting training sessions for local government bodies in collaboration with Management Board of Cabinet, handling information inquiries, and providing French Language Services.

## Manager of Compliance

**John Brans** will continue to be responsible for the day-to-day operations of the compliance unit, which specifically relate to the protection of personal privacy. The unit routinely investigates instances where an individual feels that his/her privacy has been violated by an institution. The compliance unit also ensures all institutions comply with the provisions of the *Act* by reviewing the policies and procedures involving the collection, retention, use, disclosure and disposal of personal information.





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### **Director of Legal Services**

Recruitment for the position of Director of Legal Services has begun. Legal staff provide opinions and other general legal services to the office, including providing legal opinions to Appeals Officers and Compliance staff on issues that arise in the context of an appeal or compliance investigation; analysing of comparative legislation in other jurisdictions; reviewing relevant court decisions; preparing commentaries on information and privacy issues as they arise; and writing summaries of orders and settlements.

### **Manager of Research and Statistics**

*David Duncan* is responsible for research and program evaluation as well as the IPC's office systems and computer systems. Research and statistics activities include collecting and compiling statistical information from all institutions and the IPC regarding access requests and appeals; establishing consistent methodologies for statistical reporting; environmental scanning; and evaluating the effectiveness of legislation. The office systems unit is responsible for word processing, data entry, desktop publishing and a new area of electronic desktop features such as electronic mail, calendaring, and project management software. The computer systems unit is responsible for installing and maintaining computer hardware and developing and implementing software requirements.

### **Manager of Strategic Planning and Policy Development**

*John Eichmanis* has been appointed to the new position of Manager of Strategic Planning and Policy Development. This new department will bring an organizational focus to strategic planning and policy development issues.

### **Registrar of Appeals**

*Maureen Murphy* is the Registrar of Appeals. As Registrar, Maureen's duties include registering and tracking appeals that have reached the inquiry stage in the appeals process; and arranging dates for representations if an appeal goes on to the inquiry stage.



## Commissioner's Message (con't)

our roles, it is very probable that you have already had dealings with the Freedom of Information and Privacy Branch. You will have more contact with our office once the *Act* comes into effect.

Under the *Act*, the Information and Privacy Commissioner is also responsible for conducting public education programs and providing information concerning the *Act* and the Commissioner's office. The Freedom of Information and Privacy Branch and our office are conducting awareness sessions and training sessions for local government bodies throughout the province. So far, we have spoken to municipal employees in cities and towns throughout the province including Thunder Bay, Ottawa, London, Fort Frances, and Toronto. As part of our public outreach campaign, we have also spoken with associations and groups in the province, some of them of a municipal nature.

During the next few months, I look forward to developing a mutually beneficial relationship with municipalities and local government bodies. This positive relationship will serve us well when we begin to resolve appeals and compliance issues in 1991.

Several issues related to the municipal legislation have recently become the subject of public debate. One of them is the issue of the release by the police to the media of personal information about victims and suspects of crimes.

At the moment, it is important to maintain existing practices with regard to the release of information to the media. A committee has been established to develop guidelines that will help address the issue when the *Act* comes into effect in 1991.

Additionally, my office is sponsoring a Public Forum where an invited panel and the general public will have an opportunity to discuss their concerns regarding the release of information by police about victims and suspects of crimes.

The Public Forum will be held Tuesday, May 8, 1990 in the auditorium at 252 Bloor Street West, from 7:30 p.m. to 10:00 p.m. I invite you to attend.

If you have any questions about the Public Forum or about my office, I encourage you to call. It would be our pleasure to hear from you.

## Index of Articles in Past Issues of the Newsletter

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*Cette publication est également disponible en français.*





## Book Review

### *Government Information - Access and Privacy*

By: Colin H. H. McNairn and Christopher D. Woodbury

In the Preface the authors state that the book is intended to serve as a practical guide to the use and application of Canadian access and privacy legislation. The authors have accepted a significant challenge. They address both access to information and protection of privacy in one book, and have done so in the context of the various Canadian jurisdictions that have such legislation. The reader is provided with a detailed review of the legislation and practices that have been developed in Canadian jurisdictions which have freedom of information and protection of privacy legislation.

The book covers the *Access to Information Act* (Canada), the *Privacy Act* (Canada), *The Freedom of Information Act* (Manitoba), *The Right to Information Act* (New Brunswick), the *Freedom of Information Act* (Newfoundland), the *Freedom of Information Act* (Nova Scotia), the *Freedom of Information and Protection of Privacy Act, 1987* (Ontario) and *An Act respecting Access to Documents held by Public Bodies and the Protection of Personal Information* (Quebec). The full text of each Act is included in a separate section of the book.

The book is well-organized and separates access to information and protection of privacy in a convenient way. In the case of

access to information, the approach taken by the authors is to identify and discuss the key elements contained in most access to information legislation. For example, Chapter 2 addresses the subject of the initiation of the access process and describes the relevant sections and differences between the legislation in the various jurisdictions. Unique provisions of a particular Act are identified, and interspersed throughout the chapter are the authors' comments on troublesome issues as well as references to relevant court and tribunal decisions.

In Chapter 3, McNairn and Woodbury discuss the protections against disclosure (exemptions) which exist in the various Acts. They point out the differences between exemptions and again make reference to decisions of courts and tribunals that are relevant to an understanding of the application of an exemption.

Other areas covered by the book include third party information and the rights of third parties, the response to a request for information and a very interesting chapter on "The Resolution of Access Disputes", discussing the different methods various Legislatures have chosen to deal with the question of resolving access disputes.

The final two chapters of the book deal with the collection, use, retention, disclosure and destruction of personal information by government and access to personal information. These chapters review privacy legislation in Ontario, Quebec and at the federal level. The same approach used in discussing access to information is used here.

The book contains a useful Table of Concordance showing the provisions of provincial Access and Privacy Acts and the equivalent provisions of the *Access to Information Act* (Canada) and the *Privacy Act* (Canada). It also contains a Table of Statutes and Regulations which sets out a section of a particular Act and where a discussion of the section can be found in the book.

There are several Appendices, one of which includes a list of the government institutions in each jurisdiction which are subject to access and privacy legislation. Other Appendices include the forms that are to be used in each jurisdiction when making a request for information, and the access fee charges. There is a separate Index of forms related to personal information requests.

This book offers the reader the opportunity to become familiar with access to information and protection of privacy legislation as it exists in Canada today. It is a valuable reference for both access and privacy professionals and those less familiar with the subject. The book is in loose-leaf format which will permit McNairn and Woodbury to issue periodic updates, recognizing the fact that the areas of access to information and protection of privacy are rapidly developing.

Tom A. Wright, B.A. LL.B

(The book is published by Richard DeBoo Publishers.)

### Three Year Review

The Standing Committee on the Legislative Assembly will undertake its statutory three year review of the *Freedom of Information and Protection of Privacy Act, 1987* during the summer of 1990. It is expected that the committee will solicit public submissions on the effectiveness of the legislation.

For further information, contact Deborah Deller, Clerk, Legislative Assembly Committee, Room 1521, Whitney Block, Queen's Park, Toronto, Ontario M7A 1A2. Phone: (416) 963-2977.

